IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 802 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PITAMBAR JALNATH VISWAS

Versus

STATE OF GUJARAT

Appearance:

MS RV ACHARYA for Appellant No. 1

MR KC SHAH APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/11/2002

ORAL JUDGEMENT

The appellant-original accused, being aggrieved by the judgement and order dated 30-7-1997 passed by the learned Special Judge, designated under the NDPS Act, convicting the appellant for the offences registered before the Katargam Police Station vide Crime Register No.III-1561 of 1996 punishable under Sec.8(C) and 20(B)(1) of N.D.P.S. Act imposing rigorous imprisonment for five years and fine of Rs.10,000/- and in default, further rigorous punishment of three months, has filed this Criminal Appeal.

2. The case in short are that on receiving secret information, the complainant and raiding party along with the Panches, after drawing preliminary panchnama and completing other formalities, went to the place where the present appellant-original accused was present in the Cabin as per the information and disclosed their identity. Since the accused did not avail the opportunity of carrying out search in presence of Executive Magistrate, search was carried out at the premises in presence of panchas and other members of the raiding party and contraband article of Ganja in three bags was seized from the Cabin by drawing panchnama and completing other necessary formalities like search, seizure, sealing etc., Thereafter, the appellant was sent to Police station along with muddamal and panchnama where offence was registered as Katargam Police Station Crime Register No.III-1561 of 1996 under Sections 8(C) and 20(B)(1) of Narcotic Drugs and Psychotropic Substance Act ('NDPS' for short). On analysis, muddamal was found by the FSL Officer, Ahmedabad, to be contraband article Ganja. Thereafter, case was committed to the Court of Sessions at Surat and assigned to learned Additional Sessions Judge, Surat designated as Special Judge, under the NDPS Act by numbering Sessions Case No.270 of 1996. Accused pleaded not guilty and claimed to be tried. The statement of accused was recorded thereafter under Sec.7 of the NDPS Act. The prosecution produced documentary evidence with list marks 6/1 to 6/12 and examined, in all, 11 witnesses. Further statement of the accused was also recorded. The learned Special Judge, after hearing the learned advocates for the appellant accused and considering the evidence on record, convicted the appellant for the offences punishable under Sec.8(C) and 20(B)(1) of N.D.P.S. Act imposing rigorous imprisonment for five years and fine of Rs.10,000/- and in default, further rigorous punishment of three months, vide judgement and order dated 30th July, 1997. Being aggrieved by the said judgment and order of conviction, present appeal has been preferred by the appellant-original accused.

3. This Court (Coram:N.J.Pandya,J., as he then was) while admitting the appeal refused bail vide order dtd.16/10/1997. Thereafter, this Court vide order dated dtd.1202/1999 passed in Criminal Misc.Application No.841 of 1999 directed to place the appeal on the Board of Final Hearing upon receipt of paper book.

4. I have heard Ms.R.V. Acharya learned counsel for the appellant and Mr.K.C.Shah learned Additional Public

Prosecutor on behalf of State.

5. Ms.Acharya has drawn my attention towards the reasoned judgement and order passed by the trial court as well as FIR Ex.15, panchnama of search and seizure Ex.11, FSL Report Ex.18, oral evidence of FSL Expert-Rajanikantaben N.Shah Ex.17, oral evidence of PW No.1-Bhaylalbhai Patel, Ex.10 and oral evidence of PW No.2-Dinanath Gupta, Ex.12 and argued that there is material contradiction between the evidence of Panch Witnesses and oral evidence of Dinanath Gupta, PW No.2, Ex.12 as to the presence of Mr.Dinanath Gupta with the raiding party from very beginning. She has argued that provisions of Sec.50 of NDPS Act has not been fully complied with in this case. She has further argued that when the muddamal was received by FSL for opinion, the slip pasted on the muddamal having signature of the panch witnesses was found to have been destroyed by FSL Expert.

6. Learned APP Mr.Shah, on the other hand, has argued that Sec.50 of the NDPS Act will not be applicable to the facts of the present case as it applies to a person. Drawing my attention towards muddamal slip, panchnama, FIR, Crime Writer Register, evidence of FSL Expert including that of the persons went to take muddamal, FSL report and request made for analysis, he has argued that the muddamal in question analyzed by the FSL expert was the same muddamal which was sent by the investigating agency for analysis weighing the same quantity and, therefore, mere non-pasting of the panch slips with the signature of the panches does not necessarily mean that the muddamal analyzed by the FSL expert was not the muddamal seized from the appellant. He has further argued that though there is contradiction between the evidence of panch witnesses and the oral evidence of Dinanath Gupta, PW No.2, Ex.12 as to the presence of Mr.Dinanath Gupta from very beginning with the raiding party, fact remains that PW No.2-Dinanath Gupta was present at the time when raid was carried out.

7. It clearly appears from the examination-in-chief of FSL Officer that the quantity sent by the prosecution for analysis and the quantity received by the FSL Experts are same and, therefore, the argument of Ms.Acharya, learned counsel for the appellant, that the muddamal analyzed by the FSL Expert is not the same muddamal which was seized from the appellant cannot be accepted on the ground of non-pasting of slip with signature of panch on the muddamal. Moreover, Dinanath Gupta PW 2, who was present at the time of raid and seizure, has supported the case of the prosecution. Further, Sec.50 of the NDPS

Act applies to person and therefore, the argument of the learned counsel for the appellant regarding Sec.50 also cannot be accepted. In view of the aforesaid, I am of the opinion that there is no substance in the arguments advanced by the learned counsel for the appellant and hence, this petition is required to be rejected.

8. This appeal is hereby rejected.

(R.P. DHOLAKIA, J.)
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